

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE ALBERT HEROY,

Defendant-Appellant.

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UNPUBLISHED

August 13, 1999

No. 213138

Cass Circuit Court

LC No. 97-009253 FC

Before: White, P.J., and Markey and Wilder, JJ.

MEMORANDUM.

Defendant claims an appeal from his sentence of fifteen to thirty years in prison following his plea-based conviction of criminal sexual conduct in the first degree, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty to one count of criminal sexual conduct in the first degree in return for dismissal of other charges involving the instant victim, his daughter. The presentence report indicated that defendant had been abusing other children in the family as well. The trial court rejected defendant's objections to the scoring of Offense Variables 6 and 12, and sentenced him to fifteen to thirty years in prison, with credit for 442 days. The minimum term was within the guidelines as calculated by the court.

Defendant argues that he is entitled to resentencing because the trial court's misscoring of Offense Variables 6, multiple victims, and 12, criminal sexual penetrations, resulted in the imposition of a disproportionate sentence. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). We disagree and affirm. Appellate review of challenges to the sentencing guidelines is limited. Application of the guidelines presents a cognizable claim only if (1) a factual predicate is wholly unsupported; (2) a factual predicate is materially false; and (3) the sentence is disproportionate. *People v Mitchell*, 454 Mich 145, 177; 560 NW2d 600 (1997). If the sentence is proportionate, an error in the calculation of the guidelines provides no basis for relief. *People v Raby*, 456 Mich 487, 496; 572 NW2d 644 (1998). The key test of the proportionality of a sentence is whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). A sentence that falls within the guidelines is presumed to be proportionate. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d

737 (1997). In imposing the sentence that it did, the court stated that defendant deserved substantial punishment because he had victimized not only the complainant in the instant case but also his other children repeatedly over the course of several years. Defendant has not stated a cognizable issue for review. *Mitchell, supra*. Moreover, his lack of a significant prior record does not overcome the presumption that the sentence is proportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). Defendant is not entitled to relief. *Raby, supra*.

Affirmed.

/s/ Helene N. White

/s/ Jane E. Markey

/s/ Kurtis T. Wilder